

**IN THE CIRCUIT COURT OF TENNESSEE
SIXTEENTH JUDICIAL DISTRICT AT MURFREESBORO**

ANTONIO D. ALEXANDER,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

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NO. 70558

(POST-CONVICTION)

ORDER DENYING POST-CONVICTION RELIEF

This matter came on to be heard on May 2, 2014, upon the Petition for Post Conviction Relief filed by ANTONIO ALEXANDER on September 6, 2013, as amended on February 26, 2014. After examining the Petition and other records relating to Petitioner's conviction in Case No. F-64676, and further considering the testimony of the Petitioner and trial counsel, and arguments of counsel, the Court hereby DENIES post-conviction relief in accordance with the following findings of fact and conclusions of law:

I. PROCEDURAL HISTORY

On July 27, 2010, the Petitioner was convicted by a jury of his peers of First Degree Felony Murder, Second Degree Murder, Especially Aggravated Robbery, Attempted Aggravated Robbery, Especially Aggravated Kidnapping, and Reckless Endangerment. The jury sentenced the Petitioner to life without the possibility of parole for the First Degree Felony Murder conviction, and the Trial Court sentenced the Petitioner to a consecutive 90-year sentence for the remaining convictions. The Court of Criminal Appeals affirmed the Trial Court's judgments, and the Tennessee Supreme Court denied the Petitioner's application for permission to appeal on September 20, 2012.

II. ISSUES PRESENTED FOR POST-CONVICTION RELIEF

The Petitioner raises three issues with regard to his request for post-conviction relief: (1) the alleged impropriety of the Trial Judge's actions in failing to sequester the tentative jurors after they were selected, but before they were sworn in; (2) the alleged ineffective assistance of his trial counsel in failing to object to the Trial Judge's actions in declining to sequester the tentative jurors after they were selected, but before they were sworn in; and (3) an alleged occurrence of improper jury influence during the trial, wherein a juror entered the courtroom in possession of a newspaper.¹

III. FACTS

With regard to the Petitioner's jury sequestration complaints, the Court finds that the jury selection process began on Monday, July 12, 2010, and continued for the next three days, concluding with the selection of the jury on Thursday, July 15. The Trial Court had intended to proceed with the trial on Friday, July 16 and Saturday, July 17, but certain evidentiary disputes caused the Court to recess until the following Monday, July 19. The Trial Judge specifically announced, on the record, that he was not swearing in the jury on Thursday because if he did, they would have to spend the weekend sequestered in a motel. Rather, the Trial Court allowed the tentative jury to separate after providing them with detailed admonishments not to talk with anyone about the case, read the newspaper, watch television, listen to the radio, or research the case on the internet. (See Trial Transcript, Volume IV, p. 121). The Petitioner's trial counsel did not object to these actions on the part of the Trial judge. The trial then resumed in due course on Monday, July 19, 2010.

¹ This final issue was raised and argued by Mr. Alexander, but his appointed post-conviction relief attorney was unable to substantiate this factual claim and therefore could not ethically assist Mr. Alexander with the presentation of this issue.

With regard to the Petitioner's complaints about a juror possessing a newspaper in the courtroom during the trial, the Petitioner testified that a juror entered the courtroom with a newspaper under her arm, that a bench conference was held, and that the Trial Judge asked for a show of hands from the jury as to who had read the paper. According to the Petitioner, the Trial Judge then determined that there was no mention of the trial in that particular edition of the newspaper, so the trial was allowed to go forward. This issue, however, was thoroughly investigated by the Petitioner's post-conviction counsel, who secured affidavits from two jurors (See Exhibit D to Amended Petition for Post-Conviction Relief) stating that they had no recollection of the "newspaper incident" ever taking place. Furthermore, this incident does not appear anywhere in the trial transcript.

IV. LAW

The Sixth Amendment of the U.S. Constitution and Art. I, Section 9 of the Tennessee Constitution both guarantee the right to "reasonably effective" assistance of counsel, which is assistance that falls "within the range of competence demanded of attorneys in criminal cases." Strickland v. Washington, 466 U.S. 668, 687 (1984); *see also* Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975).

In order to prevail on a claim of ineffective assistance of counsel, the petitioner must establish two prongs: (1) that counsel's performance was deficient; and (2) that the deficient performance prejudiced the defense. Strickland, *supra*, at 687. The petitioner's failure to establish either prong is fatal to a claim of ineffective assistance of counsel. Goad v. State, 938 S.W.2d 363, 370 (Tenn. 1996).

To establish the first prong of deficient performance, the petitioner must demonstrate that the attorney's "acts or omissions were so serious as to fall below an objective standard of reasonableness under prevailing professional norms." Vaughn v. State, 202 S.W.3d 106, 116

(Tenn. 2006) (internal quotation marks and citation omitted). Defense counsel must perform at least as well as a lawyer with ordinary training and skill in the criminal law. Baxter, *supra*, at 934-35. A reviewing court “must be highly deferential and must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” State v. Honeycutt, 54 S.W.3d 762, 767 (Tenn. 2001) (internal quotations and citation omitted). Counsel will not be deemed ineffective merely because a different strategy or procedure might have produced a more favorable result. Rhoden v. State, 816 S.W.2d 56, 60 (Tenn. Crim. App. 1991). Courts may not judge counsel’s performance using “20-20 hindsight.” Hellard v. State, 629 S.W.2d 4, 9 (Tenn. 1982).

To establish the second prong of prejudice, the petitioner must prove a reasonable probability that, but for counsel’s errors, the result of the proceedings would have been different. Vaughn, *supra*, at 116. A “reasonable probability” is a probability that is sufficient to undermine confidence in the outcome. Strickland, *supra*, at 694.

In a post-conviction relief evidentiary hearing, the petitioner has the burden of proving the allegations of fact by “clear and convincing evidence.” T.C.A. § 40-30-110(f). Evidence is clear and convincing when there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. Grindstaff v. State, 297 S.W.2d 208, 216 (Tenn. 2009). There is a rebuttable presumption that a ground for relief not raised before a Court of competent jurisdiction in which the ground could have been presented is waived. Id.

V. ANALYSIS

A. Actions of Trial Judge

With regard to the Petitioner’s allegations of impropriety by the Trial Judge in connection with his sequestration of the jury, this Court finds that the Petitioner has not articulated any constitutional basis upon which post-conviction relief could be granted. It is well-settled that

trial courts have the discretion to allow the separation of tentatively selected jurors, with appropriate admonitions, until they are sworn and required to be sequestered. State v. McKay, 680 S.W.2d 447, 453 (Tenn. 1984). Where the trial judge exercises this discretion, it is not grounds for a new trial unless it can be affirmatively shown that prejudice resulted from the separation. State v. Vaughn, 144 S.W.3d 391, 405 (Tenn. Crim. App. 2003). In the case at bar, the Trial Court followed the settled law under McKay, and there is no proof of any resulting prejudice to the Petitioner. This issue is without merit.

B. Actions of Trial Counsel

This Court finds that the Petitioner has failed to meet his burden of showing, by clear and convincing evidence, that his trial counsel's performance was deficient. Specifically, the Petitioner takes issue with trial counsel's failure to object to the Trial Court's decision not to swear in the tentative jurors and sequester them on the final day of jury selection. As explained above, the Trial Court's actions were in accord with established precedence; therefore, the Petitioner's trial counsel had no legal basis upon which to object or to raise this issue on appeal. This Court specifically finds that the Petitioner's trial counsel met and exceeded all standards of competency for criminal defense attorneys in Tennessee and any other state.

In short, the Petitioner has failed to prove that his trial counsel's performance was deficient in any way. As the Petitioner has failed to meet his burden under the first prong of the Strickland test, it is unnecessary to examine the second prong, and the Petitioner's claim must fail. See Goad, *supra*, at 370.

C. The Newspaper Incident

The Court is somewhat perplexed by this issue, as the Petitioner's detailed version of events is not validated by the record. Ultimately, this Court finds that the Petitioner has failed to

meet his burden of showing, by clear and convincing evidence, that the "newspaper incident" occurred, or if it did occur, that it implicated his constitutional rights in any way.

VI. CONCLUSION

Accordingly, Mr. Alexander's petition for post-conviction relief is not well-taken, and the same is hereby DENIED.

IT IS SO ORDERED.



M. KEITH SISKIN
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing Order has been mailed, postage prepaid, to the following:

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This the _____ day of _____, 20____.

Deputy Clerk